

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Dennis E. Hecker,

Debtor.

BKY No. 09-50779

Chapter 7

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**MOTION FOR LEAVE TO APPEAL**

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TO: Trustee Randall L. Seaver, by and through his attorney of record, Matthew R. Burton, Leonard, O'Brien, Spencer, gale & Sayre, Ltd., 100 South Fifth Street Ste. 2500, Minneapolis, MN 55402.

James C. Gustafson, by and through undersigned counsel, hereby moves this court for leave to appeal the decision and order of the Hon. Robert J. Kressel dated April 13, 2010 denying Mr. Gustafson's Motion to Quash Subpoena Duces Tecum. (See Order, Attached). This motion is made in accordance with Rule 8003 of the Federal Rules of Bankruptcy Procedure and Local Rule 8003-1 of the U.S. Bankruptcy Court for the District of Minnesota.

**STATEMENT OF FACTS**

On November 16, 2009, James Gustafson received a "Target Letter" from Assistant U.S. Attorney Nicole Engisch indicating that he was a target of a federal investigation that involved allegations of mail/wire fraud, money laundering, and bankruptcy fraud on the part of (or in collusion with) Debtor Dennis Hecker. On February 23, 2010, Randall L. Seaver, the Trustee in this matter, filed a Notice of Hearing and Motion for Order Authorizing the Rule 2004 Examination of James Carl Gustafson. On or about March 2, 2010, Mr. Gustafson, through undersigned counsel,

filed an Objection to the Trustee's Motion arguing that any compelled examination of Mr. Gustafson would run afoul of his Fifth Amendment privilege against self-incrimination. At a hearing on March 10, 2010, the Hon. Robert J. Kressel granted the Trustee's motion and authorized Mr. Gustafson's Rule 2004 Examination.

On March 15, 2010, Mr. Gustafson, through undersigned counsel, received a Subpoena for Rule 2004 Examination to be conducted on April 22, 2010. The subpoena also commanded Mr. Gustafson to produce an enumerated list of documents on April 15, 2010. On April 5, 2010, Mr. Gustafson filed a Notice of Hearing and Motion to Quash Subpoena Duces Tecum, again arguing that he was shielded from submitting to a Rule 2004 Examination on Fifth Amendment grounds, and also arguing that the Fifth Amendment privileged Mr. Gustafson against producing any documents in his personal possession. At a hearing on April 13, 2010, the Hon. Robert J. Kressel denied Mr. Gustafson's motion. (See Order dated April 13, 2010, Attached).

### **STATEMENT OF QUESTIONS AND RELIEF SOUGHT**

The questions to be presented on appeal to the U.S. District Court for the District of Minnesota are as follows:

- 1) Whether Mr. Gustafson may invoke his Fifth Amendment privilege against self-incrimination in advance of questioning for purposes of the Rule 2004 Examination;
- 2) Whether the documents requested in the Trustee's subpoena are personal papers/documents shielded from production by the Fifth Amendment;
- 3) Whether the act of producing the documents requested in the Trustee's subpoena has a communicative aspect that may compel Mr. Gustafson to incriminate himself in violation of the Fifth Amendment;

- 4) Whether Mr. Gustafson has made a sufficient showing regarding a sound basis for a reasonable fear of prosecution should he comply with the Trustee's subpoena; and
- 5) Whether the U.S. Bankruptcy Court for the District of Minnesota erred in denying Mr. Gustafson's Motion to Quash Subpoena Duces Tecum.

Mr. Gustafson seeks relief in the form of quashing the subpoena duces tecum issued by the Trustee.

### **STATEMENT OF REASONS WHY THE APPEAL SHOULD BE GRANTED**

This is an appeal of right in accordance with Rule 8001(a) of the Federal Rules of Bankruptcy Procedure. In general, the decision of the U.S. Bankruptcy Court for the District of Minnesota has broad-ranging implications with respect to the constitutional rights of individuals suspected (but not yet charged) with any crime, and the ability of either law enforcement personnel, agents thereof, or third parties to circumvent the protections afforded by the Fifth Amendment. Finally, the U.S. Bankruptcy Court's decision and order of April 13, 2010 appears to be in violation of applicable and/or controlling precedent, including but not limited to the decisions in Fisher v. United States, 425 U.S. 391 (1976), United States v. Doe, 465 U.S. 605 (1984), and Butcher v. Bailey, 735 F.2d 465 (6<sup>th</sup> Cir. 1985).

Respectfully submitted,

MESHBESHER & ASSOCIATES, P.A.

/s/ Steven J. Meshbesh

Steven J. Meshbesh  
225 Lumber Exchange Building  
10 South Fifth Street  
Minneapolis, MN 55402  
(612) 332-2000

Dated: April 14, 2010

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

BKY No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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**ORDER**

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This case is before the court on the motion of James C. Gustafson to quash a subpoena served upon him by the trustee.

Based on the motion and the file,

IT IS ORDERED: The motion is denied.

Dated: April 13, 2010

/s/ Robert J. Kressel  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**ORDER**

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This case is before the court on the Motion For Leave To Appeal of Mr. James C. Gustafson, with regard to this court's previous Order of April 14, 2010 denying his Motion to Quash Subpoena.

It is ordered:

Mr. Gustafson's motion to appeal this matter to the U.S. District Court is granted.

Within 14 days, the parties shall designate in writing the particular documents of the official record on appeal to be included in the designated record in accordance with Local Rule 8006-1(b) and Rule 8006 of the Federal Rules of Bankruptcy Procedure.

Dated: \_\_\_\_\_

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Robert J. Kressel  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**UNSWORN CERTIFICATE OF SERVICE**

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I hereby certify that on April 14, 2010, I caused the following document(s):

*Motion For Leave To Appeal and Order (Proposed)*

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice in accordance with Local Rule 9006-1(a).

I further certify that I caused copies of the foregoing documents to be mailed via U.S. Mail to the following persons:

Matthew R. Burton  
Leonard, O'Brien, et al  
100 South Fifth Street, Ste. 2500  
Minneapolis, MN 55402

/s/ Kevin M. Gregorius  
Kevin M. Gregorius  
Meshbeshier & Associates, P.A.  
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